

FILED & ENTERED

AUG 02 2017

CLERK U.S. BANKRUPTCY COURT
Central District of California
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NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

ARTURO GONZALEZ,

Debtor.

Case No. 2:15-bk-25283-RK

Chapter 7

**ORDER GRANTING DEBTOR'S MOTION
FOR RECONSIDERATION OF ORDERS ON
DEBTOR'S CLAIMS OF "TOOLS OF THE
TRADE" AND HOMESTEAD EXEMPTION,
VACATING HEARING AND SETTING
BRIEFING SCHEDULE**

Vacated Hearing

Date: August 15, 2017

Time: 2:30 p.m.

Courtroom: 1675

Pending before the court is the Motion of Debtor Arturo Gonzalez for
Reconsideration of Order on Debtor's Claim of a "Tools of the Trade" Exemption under
California Code of Civil Procedure § 704.060(a) Relating to the Contested Matter of the
Chapter 7 Trustee's Motion Objecting to the Debtor's Claimed Homestead Exemption in
Real Property Located at 329 Hawaiian Avenue, Wilmington, CA ("Motion") (Docket No.
210), filed on July 11, 2017. Plaintiff filed an Opposition to the Motion on August 1,

1 2017 (Docket No. 212). Debtor Arturo Gonzalez represents himself. Brett B. Curlee, of
2 Law Offices of Brett Curlee, represents Wesley H. Avery, the Chapter 7 Trustee.

3 Having considered the Motion and the Opposition thereto, the court determines
4 that pursuant to Local Bankruptcy Rule 9013-1(j)(3), oral argument on the Motion is
5 unnecessary, dispenses with it, vacates the hearing on the Motion noticed for August
6 15, 2017 at 2:30 p.m. and rules as follows.

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8 By the Motion, Debtor seeks reconsideration of the court's memorandum
9 decisions and orders sustaining the Chapter 7 Trustee's objections to his claimed "tools
10 of the trade" and homestead exemptions under the California Code of Civil Procedure
11 (Docket Nos. 202, 203, 204 and 205), filed and entered on June 27, 2017. Debtor filed
12 the Motion on July 11, 2017 seeking reconsideration of these memorandum decisions
13 and orders pursuant to Federal Rules of Bankruptcy Procedure 7054, 9023 and 9024
14 and Federal Rules of Civil Procedure 54(b), 59(e) and 60(b). Although the title of the
15 Motion refers to the "tools of the trade" exemption, the body of the Motion refers also to
16 the homestead exemption, and thus, the court construes that the Motion seeks
17 reconsideration of the court's orders on both the "tools of the trade" and homestead
18 exemptions.
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21 In the Motion, Debtor argues that he should be allowed to submit a further brief
22 on these matters since his request to do so was allegedly discussed in court at hearings
23 on a related matter on February 22, 2017 and May 30, 2017 and that the court and the
24 Chapter 7 Trustee allegedly agreed to his request at these hearings. Motion at 2-6.

25 In the Opposition, the Chapter 7 Trustee argues that the Motion should be denied
26 because the court did not extend the deadline to file a brief on these matters beyond the
27 deadline of January 31, 2017 in its last amended order entered on November 18, 2016,
28 which granted Debtor further time to January 31, 2017 to file an additional brief on these

1 matters to supplement the briefing filed by his prior counsel, who had withdrawn.
2 Opposition at 2-6. The Chapter 7 Trustee acknowledged that Debtor stated at the
3 hearings on matters not related to his claimed exemptions, Debtor's objections to claims
4 of certain creditors and Trustee's adversary proceeding to revoke Debtor's discharge,
5 on February 21, 2017 that he wanted to file a motion or pleading on the homestead
6 exemption, but that the court stated if he wanted to file a further motion or pleading, he
7 had better do it soon, but the court did not extend the deadline from its last amended
8 order. *Id.* at 3. Having listened to the audio recording of the hearing on February 21,
9 2017, the court agrees with the Chapter 7 Trustee's characterization of the hearing on
10 that date. Audio Recording of Hearing, February 21, 2017 at 2:55 p.m. to 3:17 p.m. At
11 this hearing, the Chapter 7 Trustee stated that the matter of the Trustee's objection to
12 the homestead exemption was fully litigated, Debtor stated that he may bring a motion
13 for reconsideration, and the court stated that Debtor was free to bring whatever motion
14 he felt appropriate, but the court did not further extend Debtor's time to file his briefing
15 on the litigation of Trustee's objection to the homestead exemption. *Id.*

16 The court has also listened to the audio recording of the hearings on May 30,
17 2017, which were hearings on matters not related to Debtor's claimed exemptions, his
18 objections to claims of certain creditors. Audio Recording of Hearings, May 30, 2017 at
19 2:43 p.m. to 3:07 p.m. During the hearings, Debtor requested time to file additional
20 papers on the matter of the homestead exemption, and counsel for Trustee said that he
21 needed to look at the prior scheduling order on that matter, but would discuss entering
22 into a stipulation with Debtor on that matter after the hearings. *Id.* at 2:51 p.m. and 3:05
23 p.m. to 3:07 p.m. Debtor also requested that the trial in Trustee's adversary
24 proceeding set for August 17 and 18, 2017 be continued, and counsel for Trustee and
25 the court agreed to continue that trial to October 19 and 20, 2017. *Id.* However, neither
26 counsel nor the court stated at the hearing that Debtor would be given any further
27 extension of time to file additional papers on the matter of Trustee's motion objecting to
28 the homestead exemption. Thus, the court determines that Debtor's assertion that

1 Trustee and the court agreed to extend Debtor's time to file additional papers on
2 Trustee's motion objecting to the homestead exemption is incorrect.

3 Having said this, nonetheless, the court determines that Debtor's motion for
4 reconsideration should be granted because on the same day that the court issued its
5 memorandum decisions and orders granting Trustee's motions objecting to Debtor's
6 homestead and "tools of the trade" exemptions, the United States Court of Appeals for
7 the Ninth Circuit ("Ninth Circuit") issued its memorandum opinion in *In re Lua*, No. 15-
8 56814 (9th Cir., memorandum filed on June 27, 2017)(copy attached hereto), which
9 reversed the lower court decisions in that case, *In re Lua*, 529 B.R. 766 (Bankr. C.D.
10 Cal. 2015), *affirmed*, 551 B.R. 448 (C.D. Cal. 2015). The court in its memorandum
11 decision granting Trustee's motion objecting to Debtor's homestead exemption cited
12 and relied upon the lower court decisions in *In re Lua* and was not aware of the Ninth
13 Circuit's decision issued that same day. Although the Ninth Circuit stated in its
14 memorandum decision that the "disposition [i.e., decision] is not appropriate for
15 publication and is not precedent except as provided by 9th Cir. R[ule] 36-3", *In re Lua*,
16 slip opinion at page 1, footnote *, the Ninth Circuit's decision in *In re Lua* may have an
17 impact on how Trustee's motions objecting to Debtor's homestead and "tools of the
18 trade" exemptions should be decided, and thus, the court determines that
19 reconsideration of its prior orders is appropriate. "Reconsideration is an extraordinary
20 remedy, to be used sparingly. Absent highly unusual circumstances, a motion for
21 reconsideration will not be granted unless the district court is presented with newly
22 discovered evidence, committed clear error, or if there is an intervening change in the
23 controlling law." 3 O'Connell and Stevenson, *Rutter Group Practice Guide: Federal Civil*
24 *Procedure Before Trial*, ¶12-158 at 12-69 (2017)(internal quotation marks omitted),
25 *citing inter alia*, *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir.
26 2000). Arguably, there is an intervening change in the controlling law here since the
27 Ninth Circuit reversed the lower court decisions in *In re Lua*, which this court cited and
28 relied upon in making its original ruling on Trustee's motion objecting to Debtor's

1 homestead objection, and thus, the court determines in light of this recent development
2 in the law, the parties should have an opportunity to be heard on whether the court
3 reconsider its prior rulings.

4 Accordingly, it is hereby ordered as follows:

- 5 1. Debtor's motion for reconsideration is granted.
- 6 2. The court's orders granting Trustee's motions objecting to Debtor's claimed
7 homestead and "tools of the trade" exemptions (Docket Nos. 202 and 205)
8 are stayed pending reconsideration.
- 9 3. The court orders that the parties file supplemental briefs on the impact of the
10 Ninth Circuit's decision in *In re Lua* on the court's memorandum decisions
11 and orders on Debtor's claimed homestead and "tools of the trade"
12 exemptions in accordance with the deadlines stated below. Debtor may raise
13 additional arguments relating to his exemptions in his supplemental briefs.
- 14 4. Debtor must file and serve any supplemental brief on his claimed homestead
15 and "tools of the trade" exemptions on or before October 6, 2017.
- 16 5. Trustee must file and serve any responsive brief to Debtor's supplemental
17 brief on or before November 3, 2017.
- 18 6. Debtor must file and serve any reply brief to Trustee's responsive brief on or
19 before November 17, 2017.

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1 7. After the deadline for Debtor's reply brief of November 17, 2017, the court will
2 take the matters on reconsideration under submission. The parties may not
3 file any further briefing without a court order upon written motion.

4 IT IS SO ORDERED.

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25 Date: August 2, 2017



Robert Kwan
United States Bankruptcy Judge

ATTACHMENT – COPY OF THE MEMORANDUM OPINION OF
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
IN *In re Lua*, No. 15-56814 (9th Cir., filed on June 27, 2017)

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

JUN 27 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: ROSALVA LUA,

Debtor,

ROSALVA LUA,

Appellant,

v.

ELISSA MILLER, Chapter 7 Trustee,

Appellee.

No. 15-56814

D.C. No. 2:15-cv-04026-CJC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California,
Cormac J. Carney, District Judge, Presiding

Argued and Submitted April 6, 2017
Pasadena, California

Before: McKEOWN and CALLAHAN, Circuit Judges, and QUIST, Senior
District Judge.**

*This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

**The Honorable Gordon J. Quist, Senior District Judge for the United
States Court for the Western District of Michigan, sitting by designation.

Debtor Rosalva Lua appeals the district court's order affirming the bankruptcy court's order sustaining the Chapter 7 Trustee's objection to Lua's claim of a homestead exemption. Lua argues that the bankruptcy court erred in applying state law to disallow her exemption and, to the extent the bankruptcy court could properly consider state law, it erred in not limiting the source of law to state statutory law. Finally, Lua argues that the bankruptcy court erred in applying the doctrine of equitable estoppel to disallow her exemption.

We have jurisdiction pursuant to 28 U.S.C. § 158(d), and we reverse.

A.

Lua failed to raise below her arguments that the bankruptcy court could not consider state law or state case law as a basis for disallowing Lua's claimed homestead exemption. We generally will not consider arguments raised for the first time on appeal. *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999). We conclude that none of the exceptions to this rule applies. *See United States v. Echavarria-Escobar*, 270 F.3d 1265, 1267–68 (9th Cir. 2001) (noting exceptions to the first-time-on-appeal rule). Thus, we limit our review to the bankruptcy court's application of equitable estoppel.

B.

“We apply the same standard of review applied by the district court, reviewing the bankruptcy court’s legal conclusions de novo and its factual determinations for clear error.” *Neilson v. Chang (In re First T.D. & Inv., Inc.)*, 253 F.3d 520, 526 (9th Cir. 2001).

A party urging equitable estoppel must demonstrate “(a) a representation or concealment of material facts (b) made with knowledge, actual or virtual, of the facts (c) to a party ignorant, actually and permissibly, of the truth (d) with the intention, actual or virtual, that the ignorant party act on it, and (e) that party was induced to act on it.” *Behnke v. State Farm Gen. Ins. Co.*, 196 Cal. App. 4th 1443, 1462 (2011) (quoting 13 Witkin Summary of Cal. Law § 191, at 527–28 (10th ed. 2005)). Estoppel will not be found unless all elements are satisfied. *Moore v. State Bd. of Control*, 112 Cal. App. 4th 371, 384 (2003).

The bankruptcy court found that Lua’s First Amended Schedules were a representation, under oath, that she was not claiming a homestead exemption in the Property. But the First Amended Schedules cannot form the basis of an estoppel because they set forth all of the existing facts known to Lua. Those same facts were readily available to the Trustee, and the Trustee was fully aware of them. “[W]here the person pleading estoppel had knowledge of the facts, there is no

reliance.” *Sidebotham v. Robinson*, 216 F.2d 816, 829 (9th Cir. 1954). The Trustee also knew, or should have known, that in the event circumstances changed, Lua could amend her exemptions “as a matter of course at any time before the case [wa]s closed.” Fed. R. Bankr. P. 1009(a); *see also Martinson v. Michael (In re Michael)*, 163 F.3d 526, 529 (9th Cir. 1998) (“No court approval is required for an amendment, which is liberally allowed.”), *abrogated on other grounds by Law v. Siegel*, 134 S. Ct. 1188 (2014).

The bankruptcy court found that the Trustee had no knowledge or indication that Lua was going to file her Second Amended Schedules. However, the Trustee failed to present any evidence that at the time Lua filed her First Amended Schedules, she had reason to believe that she would amend her schedules again at some point in the future. Moreover, nothing in Lua’s First Amended Schedules can be deemed a representation by Lua that she would not amend her exemptions again if circumstances changed. In fact, circumstances changed almost three years later when, at the request of the Trustee, the bankruptcy court entered an order finding that the Property was 100% community property, providing Lua a new factual basis to claim a homestead exemption.

Accordingly, the bankruptcy court shall allow Lua’s claimed homestead exemption.

REVERSED AND REMANDED with directions.

FILED

Lua v. Miller, No. 15-56814

JUN 27 2017

CALLAHAN, Circuit Judge, dissenting:

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Based on the applicable standard of review, I respectfully dissent. We review the application of equitable estoppel for abuse of discretion. *See, e.g., Red Lion Hotels Franchising, Inc. v. MAK, LLC*, 663 F.3d 1080, 1087 (9th Cir. 2011). We may reverse only if “we have a definite and firm conviction that the [bankruptcy] court committed a clear error of judgment in the conclusion it reached upon weighing the relevant factors.” *S.E.C. v. Coldicutt*, 258 F.3d 939, 941 (9th Cir. 2001). Here, I lack the requisite conviction.

By amending her initial schedules to remove her claim for a homestead exemption, Lua represented that she would not be seeking such an exemption during her bankruptcy. Based on this representation, the Trustee spent the next roughly three years attempting to maximize the value of the bankruptcy estate by monetizing Lua’s interest in her home. While it is true that Lua did not know her exact interest in the home at the time she filed her first amended schedules and that Lua never affirmatively stated she would not change her amended exemption election at a later time, Lua stood idly by as the Trustee toiled away, failing to give the Trustee even so much as an indication that she was contemplating claiming the homestead exemption. In light of these particular facts, I cannot say that the bankruptcy court abused its discretion in finding that this case’s equities favored

not allowing Lua to amend her first amended schedules. As a result, I would affirm the bankruptcy court's application of equitable estoppel.